



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

DEC 10 2009

Dilworth & Barrese, LLP  
1000 Woodbury Road  
Suite 405  
Woodbury, NY 11797

In re Application of:	:	
Werner Seifried et al.	:	
Application No. 10/828,820	:	
Filed: April 21, 2004	:	
For: SYSTEM FOR THE TRANSPORTATION	:	<b>DECISION ON PETITION</b>
OF CONSTRUCTION MACHINES,	:	<b>FILED UNDER</b>
PREFERABLY EXCAVATORS	:	<b>37 CFR 1.181</b>

This is in response to the petition under 37 CFR 1.181 received December 3, 2009 requesting a corrected Notice of Allowability.

The petition is **GRANTED**.

Petitioner asserts that the Notice of Allowability mailed November 19, 2009 incorrectly fails to acknowledge the claim for foreign priority and receipt of the certified copy of the priority document.

A review of the application reveals that a claim to foreign priority under 35 U.S.C. 119(a)-(d) was made in the declaration filed September 1, 2004. The record also shows that a certified copy of the German priority document was received on September 1, 2004.

M.P.E.P. 201.14(c) sets forth that "[w]hen the papers under 35 U.S.C. 119(a)-(d) are received within the time period set forth in 37 CFR 1.55(a)(1), if applicable, they are \*\*>entered into the application file history.< Assuming that the papers are timely and regular in form and that there are no irregularities in dates, the examiner in the next Office action will advise the applicant that the papers have been received on form PTOL-326 or by use of form paragraph 2.26."

The prosecution file indicates that a non-final rejection was mailed February 6, 2006; a final rejection was mailed September 29, 2006; a non-final rejection after the filing of a Request for Continued Examination (RCE) was mailed July 3, 2007; a final rejection was mailed April 21, 2008; and a non-final rejection after a second RCE was mailed January 6, 2009. A review of these office actions reveals that the examiner failed to advise the applicant, via the form PTOL-326 or by use of form paragraph 2.26, that the priority papers had been received.

As the priority papers received September 1, 2004 were timely filed and are regular in form and that there are no irregularities in dates, they are accordingly entered into the application files pursuant M.P.E.P 201.14(c).

The application will be returned to the examiner to provide a supplemental Notice of Allowability acknowledging applicant's claim for foreign priority and receipt of the certified copy of the priority document.

Any inquiries regarding this decision should be directed to Teri P. Luu, Quality Assurance Specialist, at (571) 272-7045



Fredrick Schmidt, Director  
Patent Technology Center 3600  
(571) 272-5150

FS/tl: 12/8/09

*R*